

Update: Sexual Assault Benchbook

CHAPTER 7

General Evidence

7.6 Former Testimony of Unavailable Witness

Insert the following text after the April 2004 update to page 364:

Admission of an unavailable witness's statement does not violate the Confrontation Clause if the defendant caused the witness to be unavailable. In *United States v Garcia-Meza*, ___ F3d ___, ___ (CA 6, 2005), the defendant admitted killing his wife but argued that he did not possess the requisite intent to be convicted of first-degree murder. The trial court admitted as excited utterances the victim's statements made to police after a prior assault. The defendant argued that the victim's statements were inadmissible under *Crawford v Washington*, 541 US 36 (2004). The Sixth Circuit rejected this argument and stated:

“[T]he Defendant has forfeited his right to confront [the victim] because his wrongdoing is responsible for her unavailability. *See Crawford*, 541 U.S. 36, 124 S. Ct. at 1370 (‘[T]he rule of forfeiture by wrongdoing (which we accept) extinguishes confrontation claims on essentially equitable grounds’); *Reynolds v. United States*, 98 U.S. 145, 158–59 (1879) (‘The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by his own wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away. . . . The rule has its foundation in the maxim that no one shall be permitted to take advantage of his own wrong.’).”

The *Garcia-Meza* Court also rejected the defendant's assertion that forfeiture only applies when a criminal defendant kills or otherwise prevents a witness from testifying with a specific intent to prevent him or her from testifying. Although FRE 804(b)(6) (and MRE 804(b)(6)) may contain this requirement, it is not a requirement of the Confrontation Clause. *Garcia-Meza*, *supra* at ____.

CHAPTER 9

Post-Conviction and Sentencing Matters

9.6 Post-Conviction Request for DNA Testing

On page 471, replace the last sentence of the first paragraph in this section with the following text:

Effective April 1, 2005, all petitions must be filed no later than January 1, 2009. 2005 PA 4.